

MAR 25 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARUS AYVAZIAN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-75895

Agency No. A70-552-899

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 18, 2008\*\*

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Arus Ayvazian, a native of Iran and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") September 15, 2005 order

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

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dismissing her appeal from an immigration judge's decision denying her application for adjustment of status. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law. *Hernandez-Gil v. Gonzales*, 476 F.3d 803, 804 n.1 (9th Cir. 2007). We grant the petition for review and remand for further proceedings.

The BIA determined that Ayvazian was statutorily barred from adjusting her status because she had failed to depart voluntarily. *See* 8 U.S.C. § 1229c(d)(1)(B) (alien who fails to voluntarily depart shall be ineligible to adjust status for a period of 10 years). However, the BIA did not have the benefit of our decision in *Barroso v. Gonzales*, 429 F.3d 1195, 1205-07 (9th Cir. 2005) (the timely filing of a motion to reopen or reconsider within the period of voluntary departure automatically tolls that period). Ayvazian filed her motion to reopen to apply for adjustment of status on April 24, 2003, within the 30 days of voluntary departure granted by the BIA on April 2, 2003. Ayvazian was not statutorily barred from adjusting her status.

**PETITION FOR REVIEW GRANTED; REMANDED.**